

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matters of)	
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Truth-in-Billing and Billing Format)	CG Docket No. 98-170
)	
ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions)	
)	

PETITION FOR DECLARATORY RULING

Pursuant to Section 1.2 of the Commission’s rules,¹ ITTA – The Voice of America’s Broadband Providers (ITTA) hereby seeks a ruling from the Commission, or the Consumer and Governmental Affairs Bureau on delegated authority, that it is and always has been permissible for a carrier recovering Telecommunications Relay Services (TRS) Fund contributions via an end user cost recovery fee line item (or the like) on customers’ bills to include TRS, among other references, in the line item description. As explained below, such a declaration is in full accord with the Commission’s precedents and guidance, as well as widespread industry practice.

I. BACKGROUND

In 1990, Congress enacted the landmark Americans with Disabilities Act (ADA). Title IV of the ADA amended the Communications Act of 1934 (Act) by adding Section 225,² which requires that interstate and intrastate telephone transmission services be made available to

¹ 47 CFR § 1.2.

² 47 U.S.C. § 225.

individuals with hearing or speech disabilities so that they may communicate with hearing individuals in a manner that is functionally equivalent to the ability of individuals without such disabilities to communicate using such services. Section 225(d)(3) provides that interstate TRS costs “shall be recovered from all subscribers for every interstate service.”³ In its first order implementing Section 225, the Commission asserted that “in order to provide universal telephone services to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone service and not as a specifically identified charge on subscribers’ lines.”⁴

In the wake of enactment and implementation of the Telecommunications Act of 1996 (1996 Act), new, separate line item charges began to proliferate on customers’ bills.⁵ Nearly a decade after *TRS I*, in response to growing consumer confusion related to billing for telecommunications service and an increase in the number of entities taking advantage of this confusion,⁶ the Commission adopted Truth-in-Billing rules.⁷ Section 64.2400(a) of the Commission’s rules states that the Truth-in-Billing rules are “intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to

³ 47 U.S.C. § 225(d)(3)(B). The Commission established the TRS Fund to compensate TRS providers for their costs of providing TRS. Carriers contribute to the TRS Fund on the basis of interstate end-user revenues, and such contributions are recovered from subscribers pursuant to Section 225(d)(3). See 47 CFR § 64.604(c)(5)(iii) (rules related to the TRS Fund).

⁴ *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4664, para. 34 (1991) (*TRS I*).

⁵ See, e.g., *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7523-25, paras. 51-52 (1999) (*First Truth-in-Billing Order*).

⁶ Such confusion especially surrounded line item charges assessed by carriers ostensibly to recover costs incurred as a result of specific government action. See *id.* at 7523, para. 49.

⁷ See *Gregory Manasher et al. Petition for Declaratory Ruling*, Declaratory Ruling, FCC 18-27, at 1, para. 2 (2018) (*Manasher Declaratory Ruling*) (citing *First Truth-in-Billing Order*).

make informed choices in the market for telecommunications service.”⁸ Section 64.2401(b) provides that charges contained on telephone bills “must be accompanied by a brief, *clear, non-misleading*, plain language description...”⁹ Recognizing that there are typically many ways to convey important information to consumers in a clear and non-misleading manner, the Commission determined in adopting its Truth-in-Billing rules to adopt broad, binding principles rather than to mandate detailed rules that would rigidly govern the details or format of carrier bills.¹⁰ Undergirding adoption of the Truth-in-Billing rules was the Commission’s “core principle that charges should be clearly described in a manner that allows consumers to understand them.”¹¹

Nearly two decades of experience with the Truth-in-Billing rules has evinced the treatment of cost recovery charges on customer bills evolving in the flexible, albeit clear and non-misleading manner contemplated by the Commission. There are various terms used to describe end user regulatory recovery fees, such as “Regulatory Charge,” “Regulatory Cost Recovery Charge,” and “Cost Recovery Fee.” Similarly, there is variety in the detail carriers use to describe the components of such fees.

Some carriers who provide more detailed line item descriptions include TRS fees among other components of their end user cost recovery fee. Such detailed descriptions precisely manifest the goals of the Truth-in-Billing rules to aid customers in understanding their telecommunications bills while affording carriers flexibility in implementing this principle.

⁸ 47 CFR § 64.2400(a).

⁹ *Id.* § 64.2401(b) (emphasis added).

¹⁰ See *Manasher Declaratory Ruling* at 6, para. 15 (citing *First Truth-in-Billing Order*, 14 FCC Rcd at 7499, para. 10); *First Truth-in-Billing Order*, 14 FCC Rcd at 7499, para. 10 (“our principles provide carriers flexibility in the manner in which they satisfy their truth-in-billing obligations”).

¹¹ *First Truth-in-Billing Order*, 14 FCC Rcd at 7522, para. 49.

However, purported confusion has arisen amongst some customers about the propriety of carriers listing TRS fees among other components in the description of an end user cost recovery fee.

II. DISCUSSION

Under Section 1.2 of the Commission's rules, the Commission may issue a declaratory ruling in order to remove uncertainty or terminate a controversy. In light of putative customer confusion regarding the description of how carriers collect statutorily required interstate TRS fees, ITTA seeks a declaratory ruling that it is and always has been permissible for a carrier recovering TRS Fund contributions via an end user cost recovery fee line item (or the like) on customers' bills to include TRS, among other references, in the line item description.

Such a ruling is in full accord with Commission precedents and guidance.¹² The Commission never elaborated upon its nearly three-decade-old, unexplained prohibition on a "specifically identified charge on subscribers' lines" for TRS costs.¹³ In subsequent references to the prohibition, the Commission focused on the prohibition being to a line item specifically identified as recouping TRS Fund contributions.¹⁴ In adopting the Truth-in-Billing rules, the Commission emphasized that it had "not mandated or limited specific language that carriers utilize to describe the nature and purpose of [regulatory] charges; each carrier may develop its

¹² In this regard, ITTA believes that the Consumer and Governmental Affairs Bureau could issue the requested declaratory ruling pursuant to its delegated authority. *See* 47 CFR § 0.361(c) (Bureau delegated authority to dispose of matters that can be resolved under existing precedents and guidelines, and that do not present novel questions of law, fact, or policy).

¹³ In fact, in the *Second Truth-in-Billing Order*, the Commission announced its intention "to revisit the prohibition on line items referring to interstate TRS in a future proceeding . . . that will take into consideration the policy objectives outlined in [the Truth-in-Billing] proceeding." *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448, 6459-60, para. 23 n.64 (2005) (*Second Truth-in-Billing Order*), *rev'd on other grounds sub nom. NASUCA v. FCC*, 457 F.3d 1238 (11th Cir. 2006). Such proceeding, however, has not been initiated.

¹⁴ *See, e.g., id.* at 6464, para. 31 n.86 ("carriers may not recover interstate TRS costs as a specifically identified line item").

own language to describe these charges in detail.”¹⁵ Therefore, harmonizing these precedents, so long as a line item description includes TRS among at least one other component, it is not a “specifically identified charge.” In fact, the Commission’s website identifies “911, LNP, and TRS charges” as “typical charges” that consumers may find on their wireline and wireless telephone bills.¹⁶

Not only is such a description fully permissible, it may be viewed as desirable in furtherance of the Commission’s Truth-in-Billing rules and the policies underlying them. As the Commission recently held, Section 64.2401(b) of the Commission’s Truth-in-Billing rules “clearly requires that a consumer’s monthly bill contain descriptions of all billed charges so consumers are fully informed about the basis of the charges.”¹⁷

That said, while such a description may be desirable where the carrier recovers its TRS Fund contributions via a non-specific line item on its customers’ bills, this petition does not seek to alter a carrier’s ability to choose how it recovers its TRS costs from its customers. As the Commission has recognized, Section 225(d)(3)(B) of the Act, which requires that interstate TRS costs be recovered “from all subscribers for every interstate service” “does not address how those

¹⁵ *First Truth-in-Billing Order*, 14 FCC Rcd at 7530, para. 60; *id.* at 7527, para. 56 (“carriers should have broad discretion in fashioning their . . . descriptions, provided only that they are factually accurate and non-misleading”). Notably, the Commission did not invoke the TRS line item prohibition as an exception to its clearly enunciated line item description policies.

¹⁶ FCC, Consumer Guides, Understanding Your Telephone Bill (Feb. 16, 2018), <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill> (Typical Charges tab, “Understanding Typical Charges on Phone Bills”); *see also infra* Appendix (relevant excerpt of “Understanding Typical Charges on Phone Bills,” in addition to complete printout). Though the Consumer Guide does not specify whether this charge would be found as a line item or line item description, in light of the TRS “specifically identified” line item prohibition, if such a charge is typical and permissible as a line item, it would also be so as a line item description. *See Second Truth-in-Billing Order*, 20 FCC Rcd at 6459, para. 23 (“carriers may offer descriptions of various charges in the form of line items”).

¹⁷ *Manasher Declaratory Ruling* at 5, para. 13.

costs are to be recovered from subscribers.”¹⁸ In addition, nearly a decade subsequent to *TRS I*, in discussing the treatment of regulatory charges under the Truth-in-Billing rules, the Commission asserted that it “prefer[s] to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in . . . line items.”¹⁹ In fact, in describing how carriers recover costs attributable to Video Relay Service (VRS), the most utilized form of TRS, the Commission explained that VRS costs “are passed on to all consumers of telecommunications service by intrastate and interstate common carriers, either as a surcharge on their monthly service bills or as part of the rate base for the state’s intrastate telephone services.”²⁰ Thus, it is clear under the statute and Commission guidelines that carriers are free to recover TRS costs from their customers either as part of their rates or via a non-specifically identified charge on their customers’ bills.

Finally, as a matter of consumer protection and welfare, it is not apparent how an end user cost recovery fee line item (or the like) on customers’ bills that includes TRS, among other references, in the line item description would cause any harm to consumers. As discussed above, a line item description that includes TRS among at least one other component remains faithful to whatever reason the Commission had nearly three decades ago for prohibiting specifically identified TRS line items, while at the same time promoting the “core principle” underlying the Truth-in-Billing rules of helping consumers understand their telecommunications bills.

¹⁸ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367, 17420, para. 145 (2011) (*VRS FNPRM*).

¹⁹ *First Truth-in-Billing Order*, 14 FCC Rcd at 7526, para. 55.

²⁰ *VRS FNPRM*, 26 FCC Rcd at 17409, para. 103 n.209.

III. CONCLUSION

Including TRS among other references in a line item description is and always has been permissible under the Commission's precedents and guidance. The Commission, or the Consumer and Governmental Affairs under delegated authority, should issue a declaratory ruling stating so. Doing so will eliminate purported uncertainty relating to this fully lawful, acceptable, and widespread industry billing practice.

Respectfully submitted,

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APPENDIX

FCC, Consumer Guides, Understanding Your Telephone Bill (Feb. 16, 2018), <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill> (Typical Charges tab, “Understanding Typical Charges on Phone Bills”)

Complete printout of this tab follows this page in separate attachment.

Understanding Typical Charges on Phone Bills

These are some of the charges you may see on both your wireline and wireless telephone bills:

* * *

"911, LNP, and TRS charges"

- **911** – To help local governments pay for emergency services such as fire and rescue.
- **Local Number Portability** – For keeping your current local telephone numbers when switching from one service provider to another at the same location. Fees may vary by company; some may not charge any fees. These fees are not taxes.
- **Telecommunications Relay Service** – To help pay for relay services that transmit and translate calls for people with hearing or speech disabilities.

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